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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, December 18, 2002

JOINT PETITION OF

CASE NO. PUC-2002-00210

XO LONG DISTANCE SERVICES (VIRGINIA) LLC

and

XO VIRGINIA, LLC,

For approval of a transfer of control from XO Communications, Inc., Debtor-In-Possession, to a Reorganized XO Communications, Inc., controlled by High River Limited Partnership

ORDER GRANTING APPROVAL

On November 21, 2002, XO Long Distance Services (Virginia) LLC (“XO Long Distance”) and XO Virginia, LLC (“XO Virginia”) (collectively, the “Petitioners”), completed a joint petition before the State Corporation Commission (“Commission”) requesting approval, under §§ 56-88.1 and 56-90 of the Code of Virginia, for the transfer of control detailed herein. The Petitioners, pursuant to a plan of reorganization of XO Communications, Inc., Debtor-In-Possession (“XO” or the “Company”), request authority to transfer control of XO and its operating subsidiaries, XO Long Distance and XO Virginia, to a newly reorganized XO Communications, Inc. (“Reorganized XO”). Pursuant to that plan, a majority of the stock of Reorganized XO will be owned, upon emergence from its current

bankruptcy proceeding, by High River Limited Partnership (“High River”), a Delaware limited partnership controlled by Carl C. Icahn.¹

XO is a Delaware corporation headquartered in Reston, Virginia. Through its operating subsidiaries, XO provides bundled local and long distance telecommunications services and dedicated voice and data telecommunications services primarily to business customers. XO is authorized, through its subsidiaries, to provide intrastate interexchange telecommunications services virtually nationwide and is authorized to provide local exchange telecommunications services in approximately 30 states. XO also offers international telecommunications services, which are incidental to its core domestic business.

XO Long Distance is a 100% wholly owned subsidiary of XO Long Distance Services, Inc., a 100% wholly owned subsidiary of XO. XO Long Distance is headquartered in Reston, Virginia, with XO. XO Long Distance is authorized to provide interexchange telecommunications services in Virginia.²

XO Virginia is also a 100% wholly owned subsidiary of XO. XO Virginia is also headquartered in Reston, Virginia, with XO and XO Long Distance. XO Virginia is

¹ Meadow Walk Limited Partnership (“Meadow Walk”), a Delaware limited partnership controlled by Carl C. Ichan, also holds notes which entitle it to an approximate 1.4% equity interest in Reorganized XO. However, the majority and controlling interest of stock in Reorganized XO will be issued to High River. Shortly after High River and Meadow Walk acquire the stock of Reorganized XO, they may distribute the stock so that it will be held by Cardiff Holding LLC (“Cardiff”), a Delaware limited liability company controlled by Carl C. Ichan. Therefore, where appropriate, references in the petition to High River also reference Cardiff as potential holder of the majority stock of Reorganized XO. Cardiff is a newly created limited liability company not currently engaged in any business but formed for the purpose of holding the interest in Reorganized XO. To the extent necessary, the Petitioners also request approval to permit Cardiff, in lieu of High River, to hold the controlling stock interest in Reorganized XO.

² XO Long Distance Services (Virginia) LLC, was granted a certificate of public convenience and necessity (“CPCN”) to provide interexchange telecommunications services by the Commission on November 27, 2001, in Case No. PUC-2001-00171.

authorized to provide local exchange and interexchange telecommunications services in Virginia.³

On June 17, 2002, XO filed a petition with the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”), pursuant to Chapter 11 of the United States Bankruptcy Code, seeking temporary protection from claims of creditors while XO reorganized its operations and restructured its finances. Prior to the bankruptcy proceeding, XO was controlled by Craig O. McCaw through his ownership interest in Eagle River Investments, L.L.C. (“Eagle River”), and through other direct and indirect holdings of XO securities and various voting arrangements.

XO will emerge from bankruptcy as Reorganized XO, a newly reorganized XO Communications, Inc. A majority of the stock of Reorganized XO will be held by High River. High River is a Delaware limited partnership located in New York, New York. High River is engaged in the business of buying, selling, investing, and holding securities and debt obligations. Carl C. Ichan has ultimate control and has a majority interest in that entity through his ultimate control and ownership of High River’s general and limited partners.

Barberry Corp. (“Barberry”), a Delaware corporation, is the general partner of High River. Carl C. Ichan holds 100% of Barberry’s stock, and Barberry holds an approximate 1% interest in High River.

High River has two limited partners, Chelonian Corp. (“Chelonian”) and Highcrest Investors Corp. (“Highcrest”). Carl C. Ichan controls approximately 99% of Chelonian’s stock, and Chelonian holds an approximate 91% interest in High River. Carl C. Ichan also

³ NEXTLINK Virginia, L.L.C. (“NEXTLINK”) was granted CPCNs to provide local exchange and interexchange telecommunications services by the Commission on July 29, 1998, in Case No. PUC-1998-00065. On December 20, 2000, NEXTLINK filed to have its CPCNs revised to reflect the new name, XO

controls approximately 99.5% of Highcrest's stock, and Highcrest holds an approximate 8% interest in High River.

On August 12, 2002, the Commission approved a transfer of control pursuant to a reorganization plan involving an \$800 million investment by an indirect, wholly owned subsidiary of Telefonos de Mexico, S.A. de C.V. ("Telmex"), and by funds associated with Forstmann Little & Co. ("Forstmann Little") in exchange for 80% of the reorganized company's equity and the elimination of most of the Company's unsecured debt and all of its existing equity. Although this plan was confirmed by the Bankruptcy Court and received approval from the Federal Communications Commission, the Petitioners represent that such plan will not be implemented. XO, Forstmann Little, and Telmex reached an agreement wherein they will terminate the Stock Purchase Agreement dated January 15, 2002, and will settle any potential claims relating to this Stock Purchase Agreement.

XO's bankruptcy filing contained an alternate reorganization plan, the "Stand Alone Plan." This is the plan for which the Petitioners request approval. On November 15, 2002, the Bankruptcy Court confirmed this Stand Alone Plan. As a result of the Stand Alone Plan, control of XO Long Distance and XO Virginia will be transferred from XO to the Reorganized XO. Ultimate control of XO Long Distance and XO Virginia will be transferred from Craig O. McCaw, through his ownership interest in Eagle River, to Carl C. Ichan, through his ownership interest in High River.

The Stand Alone Plan involves the elimination of \$3.7 billion of XO's unsecured debt and the elimination of an additional \$0.5 billion of XO's secured debt. Under the terms of this Stand Alone Plan, the outstanding shares of stock of XO will be cancelled, and \$500

Virginia, L.L.C. On February 5, 2001, in Case No. PUC-2001-00001, the Commission cancelled the CPCNs issued to NEXTLINK and reissued CPCNs in the name of XO Virginia, L.L.C.

million of the \$1 billion in existing loans under XO's secured credit facility will be converted into 95% of the new initial common stock of Reorganized XO. The remaining \$500 million will be converted into a \$500 million junior secured loan. XO note holders and general unsecured creditors will receive the remaining 5% of the initial common equity. As a result of the Stand Alone Plan, due to High River's holdings in XO debt, High River will be issued no less than 80% of the new initial common stock of Reorganized XO, resulting in High River having ultimate ownership of Reorganized XO, XO Long Distance, and XO Virginia and having the ability to designate a majority of the members of Reorganized XO's board of directors. No shareholder, other than High River, is expected to hold 10% or more of the initial common stock of the Reorganized XO.

THE COMMISSION, upon consideration of the joint petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that the transfer of control of XO Long Distance and XO Virginia from XO to Reorganized XO, as described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia, approval is hereby granted for the transfer control of XO Long Distance and XO Virginia from XO to Reorganized XO as described herein.
- 2) There appearing nothing further to be done in this matter, it is hereby dismissed.